

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
JONATHAN MONSARRAT,)	
)	
<i>Plaintiff,</i>)	
)	CIVIL ACTION NO. 17-cv-10356-PBS
v.)	
)	
BRIAN ZAIGER)	
)	
<i>Defendant.</i>)	PLAINTIFF’S FURTHER SUR-REPLY
)	
_____)	<i>Leave granted December [], 2017</i>

Plaintiff files this further sur-reply in opposition to Defendant’s October 30, 2017 Rule 12(b)(6) motion to dismiss Plaintiff’s First Amended Complaint.

Whether the three year statute of limitations bars plaintiff’s claims for direct infringement against Zaiger cannot be decided on a motion to dismiss. That the filing of a John Doe lawsuit in 2013 might have enabled Monsarrat to secure a court order to ascertain the identity of the owner of the website would have enabled only a potential remedy against the website for what Mr. Randazza calls “secondary liability.”¹ The user of the website who copied and then posted the infringing content, the Jonmon page, is identified on the website only as “Mantequilla.” FAC ¶ 17. It was this same Mantequilla who on or before April 19, 2017, took down the Jonmon page. *Id.* ¶39.

According to Zaiger² his website has no record of the user who could be sued for direct

¹ Doc. 74 at 7.

² In May 2017 after the Jonmon page had been taken down plaintiff’s counsel requested Zaiger to provide the contact information, email addresses and IP addresses of the person(s)/users who had made the postings. On May 19, 2017 Zaiger informed plaintiff’s counsel: “As for the IP and emails I just checked and the site only retains this information for 90 days. This is Mediawiki software's default. Also, I have no information on any users from the .com era (When the page was written) as the site was scraped from Google and we don't have any database

infringement.

It was Zaiger's admission that "we" have removed the page coupled with the 2017 postings/takedowns by Mantequilla that first reasonably justified an inference that Zaiger is Mantequilla. See FAC ¶¶35-42.

Plaintiff requests the Court to deny the motion to dismiss and in the alternative to dismiss with leave to amend.

DATED: December , 2017.

Respectfully submitted,

JONATHAN MONSARRAT,
Plaintiff,

By his attorney,

ss/Richard A. Goren

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on December [], 2017.

/s/Richard A. Goren

information from that iteration of the site. I suggest contacting [REDACTED] and [REDACTED] as they were the owners of the site then and may have the database still."